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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11 Case No.
	:	
LEHMAN BROTHERS HOLDINGS INC., et al.,	:	08-13555 (JMP)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**RESPONSE OF CLAIMANT NICHOLAS P. HOWARD IN OPPOSITION TO
DEBTORS' 342nd OMNIBUS OBJECTION TO CLAIMS
(EMPLOYMENT-RELATED CLAIMS)**

This Statement of Opposition to the Debtors' 342nd Omnibus Objection is submitted on behalf of claimant Nicholas P. Howard. Mr. Howard's claim seeks to enforce an obligation to pay \$362,026.03 withheld from his commissions, an obligation that was assumed by Lehman Brothers Holdings, Inc. ("LBHI") under agreements described in his Affirmation filed herewith. Debtors' Objection with respect to the claim for \$362,026.03 should be denied because

- Under agreements issued to claimant Howard each year, Debtor LBHI assumed responsibility for the amounts withheld from commissions Howard earned that are the subject of his claim.
- Debtor LBHI provided claimant Howard with the forms of Proof of Claim indicating that this was the proceeding in which Claimant Howard's claims should be filed.

Claimant Howard submits no Opposition to Debtors' Objection to the portion of his Proof of Claim related to his \$150,000 investment in MLP Opportunity Capital Partners L.P.

FACTS

The facts relevant to claimant Howard's claim and this Opposition to the 342nd Omnibus Objections are set forth in the Affirmation of Nicholas C. Howard submitted herewith.

ARGUMENT

Section 502(a) of the Bankruptcy Code provides that a claim "is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. §502(a). "A proof of claim executed in accordance with [the Bankruptcy Rules] shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). "To overcome this prima facie evidence, the objecting party must come forth with evidence which, if believed, would refute at least one of the allegations essential to the claim." *Sherman v. Novak (In re Reilly)*, 245 B.R. 768, 773 (2d Cir. B.A.P. 2000), citing *In re Allegheny Int'l, Inc.*, 954 F.2d 167 (3d Cir. 1992) and *In re Giordano*, 234 B.R. 645, 650 (Bankr. E.D. Pa. 1999). A bankruptcy claim "cannot be defeated by mere formal objection," which is all that Debtors have submitted here. *In re Sabre Shipping Corp.*, 299 F.Supp. 97, 99 (S.D.N.Y. 1969). If the objector does not "introduce[] evidence as to the invalidity of the claim or the excessiveness of its amount, the claimant need offer no further proof of the merits of the validity and the amount of the claim." 4 L. King, et al., *Collier on Bankruptcy* ¶502.03[3][f] (rev. ed. 2007). The objector must produce "evidence equal in force to the *prima facie* case" in order to succeed in its objection. *In re Oneida Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009).

The Debtors here have failed to satisfy their burden to present evidence sufficient to overcome the prima facie validity of claimant Howard's Proof of Claim. The Objection contains

no documentary or testimonial evidence supporting the argument that LBHI has no obligation for the commissions due to claimant Howard. Howard's claim, filed on the form of Proof of Claim LBHI partially completed before providing it to Howard for filing, is "prima facie evidence of the validity and amount of the claim," Fed. R. Bankr. P. 3001(f), and is further supported by his attached Affirmation and its Exhibits. Since Debtors have provided no evidence in support of their position, the 342nd Objection is without support and must be denied.

Claimant Howard submits no opposition to that part of Debtors' Objection directed at the portion of Howard's Proof of Claim relating to his \$150,000 investment in MLP Opportunity Capital Partners L.P.

Accordingly, Debtors' 342nd Omnibus Objection, as to unpaid commissions of \$362,226.03, should be denied.

Respectfully submitted,

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